

UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes: Regular Meeting of Milpitas City Council (Including Joint Meeting
with Redevelopment Agency)
Date of Meeting: January 20, 2004
Time of Meeting: 6:00 p.m. (Closed Session)
7:00 p.m. (Regular Session)
Place of Meeting: City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Vice Mayor Dixon called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski. Mayor Esteves arrived at 6:03 p.m.

CLOSED SESSION

Vice Mayor Dixon publicly stated the Council would convene in Closed Session to discuss the following four items listed on the agenda:

1. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
(Pursuant to Government Code Section 54957)
Title: City Manager
2. **CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Unrepresented Employee: City Manager
3. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020
Negotiating Party: Milpitas Redevelopment Agency
Under Negotiation: Terms and Conditions for Acquisition of Property
4. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Turner Construction et al.
Santa Clara County Superior Court Case No. CV008400

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of January 6, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Livengood. Ayes: 5

SCHEDULE

MOTION to approve the Schedule of Meetings as submitted.

M/S: Gomez, Livengood.. Ayes: 5

PRESENTATIONS

Mayor Esteves presented Paul Anthony Espinoza with a Commendation on his successful achievement of attaining the rank of Eagle Scout.

Mayor Esteves presented Don Ryan a Commendation for his many contributions to the community and recognition by the Milpitas Lions Club as "Lion of the Year." Mr. Ryan stated it was an honor to be recognized by the City Council and that he loved Milpitas and what he is doing.

Mayor Esteves presented Carmen Montano with a Commendation in honor of her selection by the Dr. Martin Luther King, Jr. Association of Santa Clara County as a recipient of the "2004 Good Neighbor Award." Ms. Montano said she was deeply honored to have received the award and was inspired to continue the struggle to combat injustices wherever they may be.

Mayor Esteves presented Alice Elizabeth Merritt with a Commendation in honor of her selection by the Dr. Martin Luther King, Jr. Association of Santa Clara County as a recipient of the "2004 Good Neighbor Award." Ms. Merritt said she would like to repeat what Ms. Montano said and continue to enhance and enrich the youngsters of the community.

Mayor Esteves read a commendation recognizing the Dr. Martin Luther King, Jr., Association of Santa Clara County for its work in keeping alive the legacy and work of Dr. Martin Luther King, Jr. and presented it to Dr. Geraldine Foite, President of the Martin Luther King, Jr. Association of Santa Clara County. Dr. Foite stated she had taught in many of Milpitas' schools and was currently in the Santa Clara USD and commended Milpitas and the MUSD for being one of the first to recognize Martin Luther King, Jr.'s birthday as a city holiday before it became a legal holiday.

Mayor Esteves read a proclamation recognizing January 19, 2004, as "Dr. Martin Luther King, Jr. Day" and presented it to local representatives of the Dr. Martin Luther King, Jr. Association of Santa Clara County.

Mayor Esteves said that in his short speech at the Dr. Martin Luther King, Jr. Day event, he stated that when Dr. Martin Luther King, Jr. is remembered, we remember freedom, equality, and diversity.

Councilmember Livengood said he appreciated the comments acknowledging that Milpitas was one of the first cities to recognize Dr. Martin Luther King's birthday as a City holiday and felt that although Dr. Martin Luther King, Jr. is recognized for the wonderful things he did for our society and our country, Milpitas had not gone as far as some other cities. Councilmember Livengood requested an item be brought back under his name to consider possibly naming a City structure or street or something after Dr. Martin Luther King, Jr. as an appropriate way to honor Dr. King.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Mr. Swanson said he thought it was nice to see the teachers of Milpitas have had a big voice in the history of this community and urged support for the Place Value System.

Jim Foran, Director, Santa Clara County Open Space Authority, asked the Council to consider Amicus Brief support for the Open Space Authority in the lawsuit (Silicon Valley Taxpayers Association, Howard Jarvis Taxpayers Association, et al v. The Santa Clara County Open Space Authority) currently pending in the Sixth Appellate District in San Jose.

ANNOUNCEMENTS

Vice Mayor Dixon stated she and Mayor Esteves had been honored to attend Paul Espinosa's Eagle Scout ceremony, and that the City should be proud that it has fine young men like Paul; she attended the Police Athletic League Football Awards Banquet, which had been a great success; attended the Police Athletic League Soccer League Awards Banquet, which had also been a success; at the last Library Advisory Commission meeting, there had been discussion about the State's economic instability and how the Federal Government is looking at the State;

discussed the necessity of the continuance of the current Library assessment coming up on the March Ballot; and the Friends of the Library had been working hard to get information sheets out and were putting together several thousands of dollars to educate the Community. Vice Mayor Dixon further stated the Friends of the Library would be holding a special Book Sale on February 14th, which would be "Romance and Computers," and the Book Sale would take place from 10:00 to 4:00 p.m. Vice Mayor Dixon said she was an honorary member of AARP and had represented the Council for the annual swearing in of officers to the local AARP Chapter 4786.

Vice Mayor Dixon reported her first official VTA Transportation meeting was very productive, there was a \$4 billion hold by the Federal Government placed on BART which would be discussed at the workshop at the end of the month; she had been reassigned from Congestion Management to the Finance and Administration Committee; felt that her past years on the ad hoc Financial Stability Committee would assist her in helping bring about a long-term financial strategy; the VTA Board had already adopted the ad hoc's 19 recommendations; she met with representatives from the Outreach Paratransit Organization and toured the facility; she attended the Emergency Preparedness Council meeting where an update on Homeland Security was presented, grant money was available, and Milpitas should feel very proud that its own people were taking positions of lead.

Vice Mayor Dixon, addressing the last Citizens Emergency Preparedness Advisory Commission, stated the annual school evacuation drill had begun, it would take place at Rose Elementary this year, and more information would be forthcoming. Vice Mayor Dixon reported that all the emergency supplies were in place at the various schools; and advised going to the City's web site for more information.

Councilmember Polanski reported at the last Community Advisory Commission meeting, Arsenio Illoreta had been named Chair and Syed Mohsin the Vice Chair; called attention to the Senior Citizen 2004 Resource Directory for Santa Clara County, stated Milpitas was featured on the cover as well as inside the Directory; addressing the 50th Anniversary celebrations, reported staff had been working on the kick-off ceremony that would be taking place on Monday, January 26, 2004, at 7:00 p.m.; there would be some great activities and invited everyone to join in on the celebrations throughout the year.

Mayor Esteves congratulated and thanked Credence Systems Corporation for opening its headquarters in Milpitas and congratulated the Milpitas Christian Fellowship for sponsoring a successful musical concert at the Milpitas High School Theatre entitled "Ward Two."

AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Vice Mayor Dixon requested item 3 be removed for a public presentation and the second part of item 6 be removed in response to a request.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 3 and part 2 of item 6, in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Ayes: 5

***4. Spay/Neuter Voucher Program**

1. Maintained existing funding for the Spay/Neuter Voucher Program.
2. Limited the number of vouchers issued to City households to three within the program year.

***5. Bikeway Master Plan**

Approved the update to the Bikeway Master Plan as recommended by the Bicycle Transportation Advisory Commission.

- *7.
Relay for Life** Approved the Milpitas Relay for Life request for fee waiver totaling \$3,649.00 from various City departments, including in-kind donation of equipment, supplies, and staffing for the June 25-26, 2004, Relay for Life event at the Milpitas Sports Center.
- *8.
2002 Park Bond
(Proposition 40)** Designated the use of the 2002 Park Bond funds (Proposition 40) for athletic court rehabilitation and adopted Resolution Nos. 7378 and 7379 authorizing the application for grant rehabilitation funds under the Roberti-Z'berg-Harris Block Grant and the Per Capita Grant Program.
- *9.
State Agreement No. M 001** Adopted Resolution No. 7380 authorizing execution of the Program Supplemental Agreement No. M 001 to Administering Agency-State Agreement No. 04-5314, subject to approval as to form by the City Attorney.
- *10.
Final Acceptance
SBWR M-2/M-3
(Project No. 6093)** Adopted Resolution No. 7381 granting initial acceptance of SBWR M-2/M-3 (Project No. 6093), subject to a one-year warranty period and reduction of the faithful performance bond to \$352,197.71.
- *12.
Carollo Engineers
(Project No. 7076)**
 1. Approved agreement amendment with Carollo Engineers in the amount of \$185,000.00 for well upgrade project (Project No. 7076), and authorized the City Manager to execute the amendment, subject to approval as to form by the City Attorney.
 2. Approved budget appropriation of \$140,000 to provide for the VTA requested design change.
- *13.
Central Contra Costs
Sanitary District** Authorized the City Manager to execute an agreement with the Central Contra Costa Sanitary District for the provision technical consulting services, subject to approval as to form by the City Attorney.
- *14.
City Aerial Orthophoto** Authorized the City Manager to execute an agreement with Towill Inc., for orthophotography in an amount not to exceed \$63,200, subject to approval as to form by the City Attorney.

PUBLIC HEARINGS

- 1.
Weed Abatement** Fire Marshal Patti Joki reported the Council had adopted Resolution No. 7371 at its December 16, 2003, meeting declaring weeds on certain described properties to be a public nuisance and setting this public hearing date; a copy of Resolution No. 7371 had been forwarded to the Santa Clara County Fire Marshal, a notice of Public Hearing was subsequently published and property owners were mailed a notice of the proposed abatement by the Santa Clara County Fire Marshal. Ms. Joki explained that the purpose of the public hearing was for property owners who objected to the removal of the weeds to state their objections before the weeds were removed and the costs made a lien upon the property.
- Councilmember Gomez questioned if the parcels on the list were undeveloped parcels. Ms. Joki confirmed that the majority of the list was undeveloped parcels and there were no residential parcels on the list.
- Vice Mayor Dixon, referring to a letter from the Breitels concerning the abatement of weeds on City property, asked Ms. Joki to comment on the problem. Ms. Joki responded the responsible party had been notified to abate the hazard and due to their failure, the City would abate the hazard and pursue cost recovery. Ms. Joki said the piece of property Ms. Breitels was referring to had not been placed on the listing because the property did not necessarily fall under the category of being abated under the County program (was a smaller sized area, which the responsible party should go through and abate).
- Councilmember Gomez inquired if the property in question could be put on the list so that it got regularly abated. Ms. Joki said she did not believe it could, but would check with the County. City Manager Wilson added that staff would be paying attention to the site in question now that it had been noticed to the City.

Mayor Esteves opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 5

MOTION to adopt Resolution No. 7375 ordering the County Fire Marshal to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

M/S: Dixon, Gomez.

Ayes: 5

**2.
2003 Citizen Options for
Public Safety Grant**

Police Commander Dennis Graham reported that the California State Legislature had awarded \$100,000 to the City of Milpitas through the Citizen Options for Public Safety Grant; it required no City matching funds; grant monies must be used to support police services. Commander Graham stated police staff had met and decided the funds could best use for purchasing new Tasers to replace obsolete Tasers; Eo Tech sites (to improve accuracy) and shoulder slings (for easier handling) for AR15 rifles; multi-channel digital video recorder to record traffic events and criminal activity at 17 major intersections; Skytrack software to improve the capability of the Investigations Unit's GPS tracking device; microphone kit for packets to improve radio transmissions and officer safety; moving radar for traffic car; night vision monocular to enhance nighttime searches; event recorder software to retrieve accident data from airbags; Kevlar gloves for cut and slash protection; crowd control bags for gas masks and filters; digital audio recorders for field use by detectives; 3 Motorola packets for Communications for evacuation scenarios and tactical dispatching; shirts, jackets and vests for evidence technicians during intense crime scene evidence collection; thermal imaging to help detect suspicious persons, vehicles and objects during darkness; 15 lockers to provide additional storage of anti-terrorist protective equipment and other gear; and a sensor system to detect motion inside buildings during hostage or barricaded suspect situations.

Mayor Esteves requested confirmation that the City would not encounter any personnel costs. Commander Graham confirmed there were no personnel costs involved. Mayor Esteves asked that the public be told where the 17 intersections were so they would know that the City has Skytrack software that would be installed. Commander Graham announced the following intersections: Dixon Landing at McCarthy, Dixon Landing at Milmont, Milpitas at Dixon Landing, Milpitas Boulevard at Sunnyhills (2 locations = S/B Milpitas at Sunnyhills and Milpitas at W/B Sunnyhills), N/B Milpitas at Sunnyhills, Milpitas at E/B Sunnyhills, Milpitas at Jacklin/Abel, Jacklin and Escuela, Jacklin and Hillview, Calaveras and Hillview, Calaveras at S/B Milpitas, W/B Calaveras at Milpitas, Calaveras at N/B Milpitas, E/B Calaveras at Milpitas, Calaveras and Abel, Calaveras and Abbott (4 different angles), Great Mall at Main Street (3 different angles), Great Mall at Abel (4 different angles), Great Mall at I-880, Tasman and Alder (4 different angles), and Tasman and McCarthy (4 different angles). Commander Graham explained that Traffic Engineering had worked with the County on the Smart Corridor Project and these were the 17 camera angles that had been determined to be appropriate; it was desired to have a recording system that would record and hold/store for several days incidents like major traffic accidents, crimes, etc.

Mayor Esteves expressed concern there was nothing planned on Park Victoria and inquired if there was anything for east of I-680. Commander Graham explained intersections were selected where major traffic accidents or crime activity occurred, were identified by the County and Traffic sections; advantage was being taken of the cameras and camera angles that had been predetermined; and the system would take information from up to 32 different cameras.

Councilmember Livengood requested clarification that the cameras would not be monitored but would be collecting data for later viewing. Commander Graham confirmed that was the case.

Mayor Esteves asked Commander Graham to explain "thermal imaging". Commander Graham said it was a device used at night or in dark atmospheres, which quickly shows all objects that are warm.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 5

MOTION to approve appropriation in the amount of \$100,000 into the police operating budget.

M/S: Dixon, Livengood.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:08 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of January 6, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

**RA4.
AGENDA**

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Polanski.

Ayes: 5

***RA5.
CIVIC CENTER PROJECT
CLOSEOUT/RELEASE OF
RETENTION**

Approved release of retention in the amount of \$30,000 for Royal Glass.

**RA6.
FY 03-04 MID-YEAR
BUDGET MODIFICATIONS**

Finance Director Emma Karlen reported that the City's current budget policies require that any additional appropriation to a department or a project budget or re-appropriation of money from one fund to another must be approved by the City Council; staff was bringing forth the mid year budget adjustments for the Council's consideration and approval; and the mid-year adjustments consisted of three categories: (1) Transfer of money between funds; (2) Additional budget appropriations to cover expenditures; and (3) Monies returned to fund balances. Ms. Karlen explained that \$5.9 million was requested to be transferred from the RDA Project fund to the Housing Reserve Fund for better accounting and interest income allocation and the amount represented the Housing Fund portion of the 1997 Redevelopment Agency Tax Allocation Bond.

Ms. Karlen explained that the second type of budget adjustment was additional appropriations to increase either the department or project budget where additional funding was needed to cover expenditures; the requests submitted were based on changing needs and conditions that were not anticipated at the time of budget preparations; some of the funding requests would be offset by additional revenue (i.e., payment from private job developers, reimbursements, grants, or developers fees for projects); and other funding requests required the use of fund balances. Ms. Karlen further explained that the third type of budget adjustment was to return money to Fund balances primarily due to completion of CIP projects or the ability of other funding sources such as grants. Ms. Karlen stated the overall impact to the City and the

Agency budget, based on the budget requests, was \$28,090,017, which included a net reduction of \$23,193 to the General Fund unreserved, undesignated fund balance; and there were sufficient balances in the General Fund and the Agency Fund to accommodate the request.

Councilmember Livengood, referring to the resolutions amending the Classification Plan, inquired why they were before the Council, as they seemed to be increasing salary ranges. Ms. Karlen explained that although the items had a nominal budget impact at this time, they were related to either increasing a salary range or because of the change of personnel, which has to be brought to the City Council, and staff was using the mid-year budget to bring it to the Council. Councilmember Livengood said he did not understand why only the five positions were being done and not the rest of the City; what was it about the positions that required the increase in the proposed ranges. City Manager Wilson explained that the Deputy City Clerk position was to increase the range based on a survey of the position in relation to comparable positions in the region, and it was being requested because it was found that that position was way below market in our region; the reason for it being done at this particular time was to address merit opportunities. Addressing item 3, Mr. Wilson said the Council's policy had been to aggressively eliminate car allowances as a separate identified program; the remaining car allowances in top staff were being asked to be included into the range of the pay as the Council had done to other classifications in the past; and this would eliminate all car allowances except for two union positions that have to be negotiated.

Mayor Esteves inquired what was the actual fiscal impact of the personnel changes. Ms. Karlen stated the only one that had fiscal impact was the Deputy City Clerk, which was approximately \$18,000 for the whole fiscal year; the rest of the positions already included car allowance in the current year budget and there was no budget impact; however, there was a negligible PERS contribution impact.

Mayor Esteves inquired if the position was the only one that needed to be adjusted. City Manager Wilson responded that on a regular basis that corresponds to the annual adoption of the budget, the Human Resources Department did reviews of the pay ranges in relation to market and to the salary proposals that were made and some positions were brought to attention by Department/Division Managers/Directors for special survey. Mayor Esteves expressed concern that this could be the first request in a line of requests that would be forthcoming. City Manager Wilson said that these were very rarely brought before the Council out of sequence; he did not believe that it had been done more than twice in his tenure with the City; it was not a common practice; wanted to make adjustments when there were substantial differences in position compensation in the market; and with regard to the salary adjustments to the car allowances, that would be a one time only event.

Mayor Esteves stated he did not have a problem as long as there would be no more until the budget hearing. City Manager Wilson said he was not aware of anybody who was recommending any consideration outside the budget cycle for the FY04-05 year.

Councilmember Livengood requested clarification that the people on the second resolution were not getting a pay increase. City Manager confirmed that was correct. Councilmember Livengood, referring to the first resolution, inquired if the person would be getting the raise of approximately \$18,000. City Clerk Blalock stated it was her understanding that the person would not go to the top of the range, but believed it would be achieved in 5% merit increments. Human Resource Direct Rosenquist confirmed that was the intention.

Councilmember Gomez stated he would be supporting the staff recommendation; referring to the large range, he felt it indicated something was wrong and that person was not being paid the scale; he did not consider it a raise so much as an adjustment for the individual; and requested a copy of the survey for his own record. Ms. Rosenquist stated she would be happy to supply that for Councilmember Gomez and further stated an internal alignment review had been done to create an opportunity for career ladders for individuals; in this particular incident, it was a position that was part of Senior Management and was also the precursor to

the City Clerk with the understanding that if a person were to be in that position, then they could promote to City Clerk; staff wanted to afford an opportunity to be able to promote into this position internally if that were available, and a pay increase was desired in order for employees to do that, and internal alignment also weighed heavily on the decision.

MOTION to:

1. Approve the Fiscal Year 2003-04 mid-year budget transfers and appropriations as itemized in the budget change form included in the Agency/Council's agenda packet.
2. Adopt Resolution Nos. 7376 and 7677 to amend Resolution 1626, the Classification Plan.

M/S: Livengood, Gomez.

Ayes: 5

**RA7.
FINANCIAL STATUS
REPORT**

Finance Director Karlen presented the Financial Status Report for the six months ended December 31, 2003, reporting that the regional unemployment rate was higher than the Nation and the State and sales tax revenue continued to decline in Santa Clara County. Ms. Karlen reviewed General Fund revenue reporting that all major revenues were down approximately 13 percent compared to the same time period last year. Ms. Karlen also reviewed revised General Fund revenue projections at \$3.95 million below the adopted budget due in large part to the permanent loss of motor vehicle in lieu fees this fiscal year and also a reduction in sales and use tax. Ms. Karlen reviewed General Fund expenditures reporting that as of the end of December, budgeted expenditures should be \$30.5 million (50 percent of \$61 million) but were slightly under budget at 47 percent, representing a year-to-date savings of approximately \$1.8 million.

Councilmember Gomez asked for clarification that as of now, the City has only collected approximately \$600,000 in motor vehicle fees. Ms. Karlen responded right now, the City is not able to collect \$857,000 and only one-third of the motor vehicle fees had been remitted.

Mayor Esteves said he would like to see a slide comparing General Fund revised revenues to the same time for FY 2003. Ms. Karlen referred to the schedule attached to the package the Council received showing FY 2003 General Fund revenue at \$39.4. Mayor Esteves asked if a table comparing adjustments could be provided. City Manager Wilson commented that the projections were based upon experience during the first half of this year and staff could show what was occurring at the same time last year; the problem was that the \$1 million just taken from VLF was the largest distortion in these numbers at this point; if we had that back, you would see the reduction in projections a bit less. Mr. Wilson further commented that it represented a half year on the expenditure side and once again the staff has done a very positive job in coming in significantly under budget; if we can maintain three to five percent at the end of the year, the \$3.95 million gap would be closed down with savings at about \$3.6 million, if the current savings rate was maintained.

Councilmember Polanski commented that the City lost \$1 million in VLF this year and based on everything she had heard, the vehicle license fees were probably permanently lost forever. City Manager Wilson responded staff really didn't know but the best estimate was that money would be returned to cities, as promised by the Davis proposal, in 2006; cities hadn't heard anything about Governor Schwarzenegger proposed budget yet; across the state cities are lobbying for a commitment for restoration like was given to the schools; the \$1 million number Milpitas lost is \$10 million for San Jose, so you can see how the impacts will hit cities across the state.

Councilmember Gomez asked what happens if the bond doesn't pass; did staff have any idea what Milpitas will be losing? Mr. Wilson said it wouldn't have any impact on the VLF because the commitment at this point by the Legislature and the Governor is for restoration; they are going to pay for that by the Governor's proposal by permanently taking property tax in almost the same amount; the difficult issue with regard to the bond proposal is that it will be amortized by one-fourth of city and county sales tax, and for Milpitas it would amount to approximately \$3 million, it's a very complicated program and the bond would have to be paid.

off by a new funding stream. Councilmember Gomez, commenting on capital projects, said for budget time he would be interested in seeing some long-term strategy as to how we are going to pay for operating and maintenance costs.

Ms. Karlen reviewed the proposed budget dates for Fiscal Year 2004-05 reporting that only May 11 and May 13 were non-regular Council meeting dates.

MOTION to note receipt and file.

M/S: Gomez, Polanski.

Ayes: 5

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:04 p.m.

The City Council meeting continued.

UNFINISHED BUSINESS

**3.
Odor Control Update**

Vice Mayor Dixon removed this item from the Consent Calendar for an oral report.

Principal Engineer Darryl Wong presented an oral update of the odor control coordination activities and key events that occurred during the past month that were listed on the agenda and reported a draft odor control action plan was included in the Council's agenda packets.

Vice Mayor Dixon said she had no questions – just compliments on the design of the complaint form.

Bill Jones, representing BFI, said Mr. Wong had been working very hard on this plan and explained what BFI was doing short-term and long-term with respect to the relocation of compost processing facilities.

Mayor Esteves expressed appreciation to BFI for their continuing efforts.

MOTION to note receipt and file progress report.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

Councilmember Gomez was out of his seat when the vote was taken.

NEW BUSINESS

**6.
Marquee Request
Friends of the Library**

Vice Mayor Dixon removed the second part of this item from the Consent Calendar stating she had a request from the Friends of the Library to remove their request to use the Marquee January 21-March 2 so they would be allowed to come back at the next meeting with a revised request. City Manager Wilson noted the first part (use of the Marquee January 21-February 6) had been approved and the second part would come back in two weeks. City Attorney Mattas said no further action was required.

BIDS & CONTRACTS

**11.
Consultant Agreement
Ethics Program**

Acting Planning Director Tambri Heyden presented the proposal to contract with Tom Shanks Consulting for preparation and implementation of an Ethics Program at a total cost not to exceed \$21,960.00. Ms. Heyden explained the scope of work included code preparation that would begin in March and be completed in May 2004; candidates for the November election would be trained in advance of the November election; and training would be in two phases and include a series of campaign ethics workshops between June and August 2004 for campaign candidates and a second phase would include a series of ethics code workshops held in November and December after the election for elected officials, commissioners, and senior

management staff. City Attorney Mattas clarified that the hourly rate listed in Exhibit A for Dr. Riley should be \$120 and not \$125, for a total of \$960, and the maximum contract amount would be \$21,960 as listed on the agenda.

Councilmember Livengood inquired what would happen if there was a perception that ethics somehow had been breached, commenting that this was the only element that was not clear to him. City Attorney Mattas responded the present contract did not include an enforcement provision but that could be done as a separate act; Dr. Shanks suggested and what was included in the contract was training for candidates this year and part of the post-election assessment to see how the processes worked; if the Council wanted to enter into a process for enforcement, it could be done by virtue of further Council action/direction, but right now it would be self-enforcement.

Councilmember Livengood asked what implementing the code and guidelines meant (implementation plan)? Mr. Mattas responded as defined in the contract and in conversations with Dr. Shanks, educational materials and how to monitor program effectiveness -- the detail he created for an ethics code and the material he provided were much more detailed than what has been seen in other Codes of Ethics.

Councilmember Polanski commented that part of the implementation plan was to provide election campaign training and some educational materials so all of that would be part of the implementation plan. Councilmember Polanski said the CAC was still very interested in moving forward with this and were more than willing to assist to see that this was carried forth and we get input, not only from stakeholders, but the community; if a steering committee becomes part of this, one of the CAC members, Craig Ranker, who has been very active in this would very much like to be on that committee. Councilmember Polanski commented on a recent discussion in the San Jose Mercury News on ethics, consultants, and lobbyists and she believed a lot of the items in the article were very appropriate and should be included in the scope.

Vice Mayor Dixon said she thought this subject was probably the most appropriate thing to happen in the valley right now; if ever there was a thing driven home in Iowa by the surprise turnaround, people were truly tired of negative campaigning; she thought what Councilmember Polanski hit upon was a series of articles in the Mercury and at the end of each editorial they had an invitation -- who will step up to ensure that the public knows who's wielding influence, how much money is in place, and who's ponying up. Vice Mayor Dixon said this Council was the only one putting an ethics code together right now and she would like to see something legally that would put teeth into an ordinance and strongly encouraged the Council to include this as part of the scope when we sit down with the contract with Dr. Shanks.

Mayor Esteves inquired what was preventing completing the whole cycle and including the enforcement portion and felt it may be a futile effort if enforcement didn't come into play.

Councilmember Polanski said one of the main reasons was when this was being put together, the main focus of the CAC was to educate the public going into the campaign about what to look for in a clean v. negative campaign and what to look for with slate mailers; part of what the CAC was looking at in the initial year was that the education portion be provided to the public; the CAC felt that if the public was educated about good campaigns, they felt that would be quite a task to put on top of the actual code and then work with enforcement. City Attorney Mattas said he agreed with Councilmember Polanski's comments commenting that this was a pretty aggressive time schedule and because of the full scope of work that needed to be done and particularly because of the educational aspect, we felt this was the appropriate way to do this and the timing to do this; Dr. Shanks also believed that the training and post-election awareness survey were very valuable in terms of assisting folks in understanding the impact and actions and felt it an important step for this process to go through.

Mayor Esteves said he wanted to make sure the code was clear and not subject to misinterpretation.

Councilmember Livengood said he thought this was a sound way to proceed and also thought it important for the public to know that this would be a full review of conduct - not only the kind of mailers sent out but also the way candidates conduct themselves; it would also have a lot of input regarding the way elected and appointed officials conduct themselves in office; he agreed with the City Attorney this was an ambitious plan, however, you have got a plan and he thought it could be achieved if we work very hard, and he was grateful to everybody who put the effort in on this.

Mayor Esteves said the issue of information or misinformation needed to be emphasized.

Vice Mayor Dixon said the word was manipulation, she agreed with Councilmember Livengood that a lot of work had gone into this, she wanted to make sure some type of code as to how far we can go imposing a code or registration for lobbyists and consultants to know who they are representing was included, cited the \$2,000 threshold in San Jose and requested that when staff brought this back to the Council, the threshold might be lowered to \$1,000 because Milpitas is much smaller than San Jose.

MOTION to authorize the City Manager to execute the consultant agreement with Tom Shanks Consulting in an amount not to exceed \$21,960 and include a lobby and consulting portion.

M/S: Polanski, Dixon.

Ayes: 5

**CLOSED SESSION
(CONTINUATION)**

Mayor Esteves announced the Council would adjourn to Closed Session to continue discussion of the items listed on the agenda. Mayor Esteves adjourned the City Council meeting to Closed Session at 8:51 p.m. The City Council meeting reconvened at 9:17 p.m.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:17 p.m.

Gail Blalock, CMC
City Clerk